



TERRY ALLEN PERL
PRESIDENT
CHIEF EXECUTIVE OFFICER

December 10, 2004

President's Committee for Purchase from
People Who are Blind or Severely Disabled
Attention: G. John Heyer
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, Virginia 22202-3259

Note: Sent by Federal Express
Faxed to: (703) 603-0755
Email to: rulecomments@jwod.gov

Dear Mr. Heyer:

Pursuant to the regulations proposed by the Committee for Purchase from People Who are Blind or Severely Disabled and the Office of Management and Budget, published in the Federal Register November 12, 2004, 41 CFR Parts 51-2, 51-3, and 51-4 [Docket No. 2004-01-01] RIN 3007-AA00, Chimes is submitting the attached comments to the Office of Management and Budget and the Committee regarding the impact of the data collection required by the proposed rule change. Prior to the February 10, 2005 extended deadline, Chimes will submit additional comments to the above captioned proposed rules.

Sincerely,

A handwritten signature in dark ink, appearing to read "Terry Allen Perl", is written over a large, stylized, cursive flourish.

Terry Allen Perl
President and CEO

Encls.

cc: Ms. Janet Yandik

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Chimes Comments on Regulations Proposed by the
Committee for Purchase from People Who are Blind or Severely Disabled
Published in the Federal Register November 12, 2004
41 CFR Parts 51-2, 51-3, and 51-4 [Docket No. 2004-01-01] RIN 3007-AA00
Governance Standards for Central Nonprofit Agencies and
Nonprofit Agencies Participating in the Javits-Wagner-O'Day Program
December 10, 2004

The Chimes is concerned about the unnecessary and duplicative paperwork burden the proposed rule imposes. Currently nonprofits submit the same data about executive compensation to the Internal Revenue Service ("IRS") on a Form 990. The IRS reviews the 990 data to determine the reasonableness of nonprofit executive compensation. Requiring an additional report is unnecessary and duplicative of the IRS form. The Committee states that the reason it is not requesting the submission of copies of IRS Form 990s is because nonprofits have varying fiscal years and because nonprofits may be two or three years behind the current fiscal year in filing their IRS form 990s due to extensions. 69 Fed. Reg. 65398 (Nov. 12, 2004).

First, it is incorrect that IRS 990s may be submitted 2-3 years after the subject fiscal year ends. The maximum permissible delay beyond the completion of a nonprofit's fiscal year for filing a 990 would be less than one year; specifically the delay would be no more than 11.5 months. The maximum IRS extension is 6 months after the original due date, which is 5 1/2 months after the end of the fiscal year. Treas. Reg. § 1.6081-1(a). So for an organization using a calendar fiscal year, the 990 is due on May 15th, and the maximum extension is until November 15th. Accordingly, the Committee could receive the 990 copies in a reasonable time period. There is no reason why the Committee can not make a nonprofit's continuing eligibility contingent on the 990 data. It does not absolutely have to review executive compensation at the precise time it reviews workforce data. Comparing the burden on nonprofits of making a special calculation mid-fiscal year of executive compensation and certifying its accuracy versus the Committee's doing a second eligibility check again when the 990 copy is submitted, the burden on the nonprofits (and the cost to them) outweighs the Committee's minor task of doing a second eligibility check. The total time spent by the Committee would be the same even though the eligibility check would come in two steps.

Second, it is unreasonable and burdensome to require participating nonprofits to make a determination of executive compensation possibly at some midpoint during the nonprofit's fiscal year for no reason other than to coincide with the submission of the Committee Form 404s. A snapshot of the workforce data submitted on a 404 can be done at any time and currently is required to be done based on the Federal fiscal year. There is a connection between the accumulation of the data and the due date for the 404 since many Federal contracts' performance periods track the Federal fiscal year. However, this is not the case with executive compensation. Executive compensation tracks a nonprofit's fiscal year. While base salary may be set for the fiscal year, performance-based compensation in the form of bonuses and deferred compensation, as well as contributions to defined benefit plans, will typically be determined after the close of the nonprofit's fiscal year when the Board has reviewed annual performance measures. (When OMB sets the benchmark for reimbursable executive compensation for Federal contracts (currently at \$432,851), it uses corporate fiscal year data. And, the Federal Acquisition

Regulation that implements the benchmark (FAR § 31.205-7) restricts reimbursable executive compensation costs paid during a contractor fiscal year.) It is unreasonable and burdensome to require a nonprofit to try and determine (and estimate) executive compensation mid-year. There is no reason why the Committee can't review eligibility when the IRS data comes in. A nonprofit's continuing eligibility after receiving workforce data can be contingent on receiving satisfactory compensation data on the 990.

Finally, the IRS has authority to review the reasonableness of executive compensation. Therefore it is proper and appropriate to use data reported to the IRS for any Committee review of executive compensation.

The Chimes reserves the right to file comments on the substantive content and legality of the rule by the extended February 10, 2005 deadline.